SUPREME COURT OF FLORIDA

ANTHONY A. HALL

Appellant

CASE NO. 74,061

-vs-

THE STATE OF FLORIDA

Appe11ee

APPEAL FROM THE CIRCUIT COURT,
VOLUSIA COUNTY, FLORIDA

APPELLANT'S REPLY BRIEF

GERARD F. KEATING, P.A.

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APPELLANT'S DEFENSE IS NOT DIMINISHED CAPACITY BUT McNAUGHTON INSANITY.

The Notice of Insanity filed by the Appellant is two fold. The nature of the temporary insanity at the time of the offense is that (1) the defendant acted under the influence of Satan and/or Bunny Dixon and therefore was robbed of his free will and **(2)** he did not know right from wrong under the McNaughton rule at the time of the offense **(R1341,** numbers added).

The Insanity Defense is traditional. The facts of Hall's case are bizarre and current.

The insanity notice was filed pursuant to Rule **3.216** Florida Rules of Criminal Procedure. This notice contains a statement of particulars showing the nature of the insanity the defendant expected to prove and the names and addresses of the witnesses by whom he expected to show such insanity. The trial court under Rule **3.216** (d) had the opportunity to order that the defendant be examined by two disinterested qualified experts as to sanity or insanity. The State never made such a demand and the court never entered an order[1]

Footnote: 1 The trial court entered an order for mental examination dated **5/9/88** (R **1331 - 1333).** That order was done inadvertently and was withdrawn and declared null and void by amended order dated **5/31/88 (R 1335 - 1336)**

thereupon. Rule 3.216 (h) goes on to state, "The appointment of experts by the court shall not preclude the State or the defendant from calling additional expert witnesses to testify at the trial... Other evidence regarding the defendant's sanity may be introduced by either party."

At trial, pursuant to the rule, the defendant attempted to call Dr. Andrew Farinacci, PhD., Clinical Psychologist and Professor Randall Balmer, Columbia University, Department of Religion to give testimony and evidence regarding defendant's insanity. The court refused to let the witnesses testify in the guilt phase. The trial court erred and violated defendant's constitutional rights under the Sixth and Fourteenth Amendments and rights under Rule 3.216 (h) Florida Rules of Criminal Procedure.

In his notice of intent to rely on defense of insanity (R 1341) the defendant requested a jury instruction on the consequences of a verdict of not guilty by reason of insanity which was denied as was his Motion for Judgment of Acquittal on insanity grounds. (R 777)

The Appellee has misconstrued and mislabeled Hall's defense as a diminished capacity one. Hall's defense is based upon the standard of Insanity under the McNaughton rule. In none of the cases cited by Appellee setting forth a diminished capacity defense, does the defendant offer the testimony of a duly qualified expert, psychiatrist to testify that the defendant was unable to distinguish between right and wrong at the time of the offense under the McNaughton

rule.

The psychological evaluation dated March 14, 1989 of Anthony Hall, which was proffered into evidence (R 776, 1490-1494) demonstrates the nature of the psychiatric testimony. During the evaluation the psychologist administered five different objective psychiatric tests:

Wechsler Adult Intelligence Scale Revised
Rorschach Test
Sentence Completion Test
Thematic Apperception Test
Projective Drawings (R 1492)

The report states, Assessment findings: "Perhaps most significantly his poorest performance occurred on a measure of social judgment and common sense reasoning. His performance is **so** poor in this regard as to suggest an impairment of judgment and a diminished interest in social interactions such as found in underlying schizophrenic conditions." (R 1492) Dr. Faranacci goes on to state, "This kind of splitting off of affect and intellect is characterized of individuals with schizophrenic disorders." (R 1493) "He is susceptible then to reality distortions prompted by impaired perceptions of the world around him when stressed. It is felt that on the day of the shooting incident in which he was involved that he experienced an altered state of consciousness in which dissociative behavior was manifest prompted by an inordinate level of fear and anxiety." (R 1493). "On the date of the shooting in which he was involved, he is judged to have been operating with a state of altered consciousness brought on by extreme stress,

namely fear for his own life and for the life of his sister. At that point on he was operating in a very mechanical fashion responding to the whims of his associates and unable to make decisions for himself and unable to make distinctions between right and wrong." **(1493)**

Dr. Faranacci testified during the sentencing phase, "That's characteristic of an individual with some severe psychological disturbance." (R **1160)**

"Question: Did you have an opinion as to whether on the day of the shooting that Tony was in his right mind?

Answer: I think at the time of the shooting he was definitely unable to distinguish right and wrong. He was not in his right mind. (R **1163)**

Question: Doctor you are familiar with the *so* called McNaughton Rule, right?

Answer: Yes.

Question: Do you have an opinion about whether or not Tony Hall fit within the McNaughton Rule of insanity?

Answer: Yes.

Question: What is your opinion?

Answer: My feeling is that he would fit the concept of insanity as characterized by the McNaughton rule.

Question: On the date of the offense?

Answer: On the date of the offense." (R **1165)**

Appellee's cases of Chestnut **v.** State and Ramirez **v.** State are diminished capacity cases, unlike Hall's, and are clearly distinguishable. In Chestnut the defendant did not

file a notice of intent to rely on defense of insanity or an insanity plea. The court in Chestnut, 538 So.2d 820 (Fla. 1989) at 821 states: "absent an insanity plea, expert testimony as to mental status, especially when offered to bolster an affirmative defense would be improper in and of itself since it would only tend to confuse the jury." Likewise, an insanity defense was never pled in Ezzell v. State, 88 So.2d 280 (Fla. 1956), Tremain v. State, 336 So. 2d 705 (Fla. 4th DCA, 1976) and Kight v. State, 512 So.2d 922 (Fla. 1987).

Since Hall clearly did not know the difference between right and wrong at the time of the crime according to Dr. Faranacci's testimony, he was legally insane. His insanity and inability to form the requisite specific intent are material and relevant to the defense.

Hall's insanity defense is in varying degrees susceptible to quantification or objective demonstration and to lay understanding and therefore is a scientifically reliable testimony.

The Appellee has mischaracterized the issue as one of whether the court should accept Hall's defense as a diminished capacity defense. That's not the issue. The three issues are: (1) whether Dr. Farinacci's expert testimony is admissible to show Hall's McNaughton insanity; (2) whether Professor Balmer's testimony is admissible to rebut the specific intent requirements for premeditation and and robbery and kidnapping; (3) whether Balmer's testimony is

admissible as an adjunct to the insanity defense because he can establish the connection of religious and mythological symbols, archetypes and phenomology to psychiatric schizophrenia. Compare Joseph Campbell's parallel and complementary analysis of the mythological hero journey with the psychiatrist's imagery of schizophrenic fantasy. (Myths to Live BY, Campbell p. 208).

"Whether evidence of mental condition should be admitted if it is relevant to the existence of a state of mind required for conviction is purely an evidentiary question, not an issue of substantive criminal law doctrine." Chestnut at page 826, Justice Overton dissenting.

The key distinction between the Chestnut case and Hall's case is that in Chestnut objective evidence of the abnormal mental condition did not constitute legal insanity. In Hall on the other hand, the testimony was that Hall fit within the definition of legal insanity under the McNaughton rule.

In Chestnut v. State, 505 So.2d 1352 (Fla. 1 DCA 1987) at page 1353, the trial court ruled that the proposed testimony of the expert defense witnesses, Drs. Krop and Valenstein, would be excluded, because neither would be able to state that appellant met the McNaughton test for insanity. The testimony in Chestnut was that Chestnut had an abnormal mental condition less than that required by the McNaughton standard.

How can Appellee argue that Dr. Faranacci's testimony, that defendant Hall had been unable to distinguish right from

wrong at the time of the murder (R 1494), was irrelevant? (Brief p. 7) Relevant evidence is evidence tending to prove or disprove a material fact. Once Hall raised the insanity defense his state of mind was material and relevant. The testimony is key to establish the insanity defense. His state of mind was likewise relevant to rebut the specific intent requirements and premeditation.

The expert testimony of Dr. Faranacci and Professor Balmer should have been admitted because there is an adequate scientific basis upon which the defense of insanity under the McNaughton rule and the defense of insanity under the influence of Satan may have rested.

Ramirez v. State, 542 So.2d 352 (Fla. 1989) discusses the reliability or scientific acceptance of the defense before it can be admitted.

The case of Ramirez stands for the proposition that the Supreme Court will accept new scientific methods of establishing evidentiary facts only after a proper predicate has first established reliability of the new scientific method. The Supreme Court in Ramirez held that admission of testimony positively identifying a particular knife as the murder weapon was not harmless error. In Ramirez it was the state which introduced the expert testimony. The Supreme Court reversed and remanded because the trial court erroneously allowed a ballistics and tool mark expert to conclusively identify the knife as the murder weapon. This Supreme Court found that there was no scientific predicate

that was established from independent evidence to show that a specific knife can be identified from the marks made on cartilage. The expert witness technician had never before testified in court in a knife identification case as an expert witness.

This court in Ramirez at page 355 said, "the qualification of the witness is not however the primary issue in this case. Rather the real issue is the reliability of testing methods which form the basis of the witnesses conclusion." The court in Ramirez held that "the expert testimony of the tool mark identification technician did not have a sufficient predicate of scientific reliability." The court stated in Ramirez "clearly in the instant case insufficient evidence exists to establish the requisite predicate for the technician's positive identification of the knife as the murder weapon." The court in Ramirez applied the principles of harmless error set forth in State v. DiGuilio, 491 So.2d 1129 (Fla. 1986) to require the state to establish "beyond a reasonable doubt the error complained of did not attribute to the verdict or, alternatively stated, that there is no reasonable possibility of the error contributed to the conviction".

In the Hall case the state contends (brief p.7) that there is no scientific basis upon which the insanity defense can rest. The state is erroneously trying to lump together both independent prongs of Hall's insanity defense: (1) that he acted under the influence of Satan and Bunny Dixon to the

extent that he did not know right from wrong; (2) he did not know right from wrong under the McNaughton rule and was legally insane at the time of the offense. Clearly there is a scientific basis for the psychiatric testimony of Dr. Faranacci. Florida courts have long recognized that the McNaughton rule when testified by a psychiatrist establishes legal insanity.

The state contends (brief p.8) that the insanity defense is incapable of scientific acceptance because it is metaphysical in nature. Another way of phrasing the state's objection is: that the testing methods of Psychiatrist Faranacci and/or Professor Randall Balmer are not sufficiently reliable to form the basis of their conclusion.

Psychiatry has long been accepted as providing a reliable basis of testing methods for the purpose of expert opinion. Psychiatry itself has long considered the occult and religious phenomena as proper subject matter for its scientific psychiatric inquiry and testing. Carl Jung, Swiss Psychiatrist and Physician published extensively on the connection between Psychiatry, Occult Phenomena, Schizophrenia, Spirit and Psychology and Religion. From the Collected Works of C. J. Jung are the following: "Psychiatric study on the Psychology and Pathology of so called Occult Phenomenon" (1902); "Mental Disease on the Psychic" (1928); "On the Psycho Genesis of Schizophrenia" (1939); "Recent Thoughts on Schizophrenia" (1957), "Schizophrenia" (1958), "The Psychological Foundation of Belief In Spirits"

(1920/1948), "Spirit and Life" (1926), "The Phenomenology of the Spirit in Fairytales" (1945/1948), "Psychology in Religion" (The Terry Lectures, 1938/1940). Carl Jung's scientific inquiry into psychic mind and spirits indicates that psychiatric testimony of this nature is scientifically acceptable.

Carl Jung investigated spiritualistic phenomena. In investigating the occult he was treated with "derision and disbelief" by fellow students, (Jung His Life and Work p. 68) Hall has been subject to the same derision and disbelief in raising this defense. Carl Jung attended seances for the purpose of proving whether the phenomena were genuine or not, and if they were, to investigate them as scientifically as possible. Jung stated that there was no doubt that the psychic phenomena at the seances were completely genuine. (Jung, Memories, Dreams & Reflections p. 99). He referred to these phenomena as parapsychological phenomena as distinguished from the state's position that these are metaphysical. (State Brief page 8.)

Jung sounds like an apologist for Hall's insanity defense position in the instant case. "It is a general human characteristic for people to assert that what they cannot sense does not exist, *so* they deny the objective existence of the unconscious. Then they think themselves justified in calling statements of these facts, which they do not seek, "mystical," "esoteric," anything but the scientific statements they really are." (Jung, His Life and

Work page **122)**

The clinical psychologist Andrew Faranacci has described Hall's symptoms as a form of schizophrenia. (R **1492-1493)** Professor Randall Balmer has testified that due to Hall's fundamentalist Christian beliefs he was particularly susceptible to believe in Satan's influence as perpetrated by co-defendant Bunny Dixon. There is reliable scientific authority establishing a scientific basis for the inquiry into the relation between schizophrenia and religion. John Weir Perry, M.D. of San Francisco published a paper in **1962** in the Annals of the New York Academy of Sciences, Volume **96**, Article III pages **853** to **876** January **27, 1962**. In said paper Dr. Perry stated psychologically based symbolic themes and motifs of all traditional mythologies were clinically, spontaneously demonstrated in the broken off, tortured state of mind of modern individuals suffering from a complete schizophrenic breakdown. (Campbell, p. **208)**

Joseph Campbell, compares the imagery of schizophrenic fantasy as set forth in Dr. Perry's paper on schizophrenia as a perfect match to the mythological hero journey. (Id.)

Another example of scientific analysis into the connection between schizophrenic state and a religiously induced mystic state appears in the paper, "Shamans and Acute Schizophrenia," by Dr. Julian Silverman of the National Institute of Mental Health published in the American Anthropoligist Volume **69** No. **1** February, **1967.**

Joseph Campbell at page **215** states, "The LSD retreat and

inward plunge can be compared to an essential schizophrenia". Campbell states, "What is the difference between a psychotic or LSD experience and a yogic, or a mystical? The plunges are all into the same deep inward sea; of that there can be no doubt. The symbolic figures encountered are in many instances identical." Campbell at page 237. "In sum, then: The inward journeys of the mythological hero, the shaman, the mystic, and the schizophrenic are in principle the same". Id

Religion Professor Randall Balmer can offer evidence relating to the religious experiences of Tony Hall for comparison to the schizophrenic state of mind which Dr. Faranacci attributed to Tony Hall at the time of the incident.

Under the Ramirez case the reliability of the testing methods of the psychologist, Dr. Andrew Faranacci and Religion Professor, Randall Balmer which form the basis of these witnesses conclusions, is historically firm.

Professor Balmer's testimony, although not expert psychiatric testimony, is approved in Rule 3.216 (h). The rule states that the defendant can call additional expert witnesses to testify at trial and "other evidence regarding the defendant's sanity may be introduced by either party." Professor Balmer's testimony is evidence regarding the defendant's sanity.

According to the DiGuilio test this court must conduct an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict. That

evidence follows. The defendant proffered the psychological report done by Dr. Andrew Faranacci in the guilt or innocence phase. (R **776)** That report indicates that defendant showed schizophrenic symptoms, was unable to make distinction between right and wrong, that Hall fit into the legal concept of insanity under the McNaughton rule. (R **1492-1493, 774-779)** It is clear that any of this impermissible evidence might have possibly influenced the jury to render a verdict for any lesser included crime other than first degree murder, or in the penalty phase to come back with a vote of 6 **-6** instead of the eventual **7-5** vote.

The Appellant's initial brief at pages 5 and **6** contains a summary of the impermissible evidence which might have influenced the jury verdict. In addition see defendant's exhibits marked for identification in open court "O" and "P" and proffered into evidence, Notice of Filing Proffer of Expert Testimony (R **1478-1489),** Psychological Evaluation dated March **14, 1989** by Andrew R. Faranacci, Ph.D **(1490-1494)**

In the proffer of expert testimony Professor Randall Balmer states that he has studied the profound effect that religion has on individuals in their behavior, he describes Satanism or Devil Worship **(1479)** that through Devil Worship the Power of Satan can affect individual actions, that an individuals free will can be overcome through the effect of Satan **(1480),** individual ability to distinguish right from wrong can be obliterated or impaired **(1480),** that an individual such as Hall who took the New Testament seriously

could have his ability to know right from wrong diminished or obliterated by a Satan worshipper (1481), that Professor Balmer could provide facts, data or information to a psychiatrist to assist a psychiatrist in formulating an opinion as to insanity (1482), that someone acting under the effect of Satanism could be under the influence of extreme emotional or mental disturbance (1483), the witness' familiarity with the Satanic Bible (1484), the effect of the Satanic Bible on individuals **(1484).** Professor Randall Balmer's testimony during sentencing (R 1083-R1151) and Dr. Andrew Faranacci's testimony during sentencing show the impermissible evidence available during the guilt phase. **(R 1151** R **1183)**

The exclusion of this evidence was surely not harmless error. The state cannot establish beyond a reasonable doubt that the error in excluding this evidence did not contribute to the verdict. There is surely a reasonable possibility that this error contributed to the conviction. In the DiGuilio test this is harmful error and requires a reversal of the conviction and sentence of death and a remand of this cause for a new trial.

The permissible evidence indicates that Tony Hall was a party to the crime. That's the state's case. The defendant's case attempted to show why he was a party to the crime without having the required legal intent and sanity.

"In the instant case there is no doubt that Morgan committed the murder. Rather the sole issue is his sanity

at the time he committed the offense. As reflected in this opinion, Morgan was not able to present evidence on this question." Morgan v. State, 537 So.2d 973 (Fla. 1989).

ARGUMENT ALL ISSUES

Defendant has properly preserved all issues for appeal. Defendant at oral argument will be ready to direct the Justices to the specific portions of the record, if required.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Reply Brief has been furnished by U. S. mail to David S. Morgan, Esquire, Assistant Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, FL 32114 this 30th day of January, 1990.

_____
GERARD F. KEATING, ESQUIRE